

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

4570 NAVARRE-COULEE ROAD,  
CHELAN, WASHINGTON,  
TOGETHER WITH ALL  
APPURTENANCES, FIXTURES,  
ATTACHMENTS, AND  
IMPROVEMENTS THERETO AND  
THEREUPON,

Defendant.

CV-06-321-LRS

Findings of Fact and  
Conclusions of Law

I. Nature of the Proceedings and Statement of Jurisdiction

On November 14, 2006, the United States filed the Verified Complaint for Forfeiture In Rem and Notice of Complaint for Forfeiture. CR 1.

On November 16, 2006, the United States served a copy of the Notice of Complaint for Forfeiture, Verified Complaint for Forfeiture In Rem, and Lis Pendens, via certified mail, upon Al Mendoza, as evidenced by the Certificate of Service of Notice by Mail filed herein on November 16, 2006. CR 5.

On November 21, 2006, the U.S. Marshals Service posted the Defendant real property with copies of the Verified Complaint for Forfeiture In Rem, Notice of Complaint for Forfeiture, and Lis Pendens, as evidenced by the USM-285 filed herein on November 29, 2006. CR 7.

On November 21, 2006, the U.S. Marshals Service personally served Patricia Mendoza with copies of the Verified Complaint for Forfeiture In Rem,

Findings of Fact and Conclusions of Law - 1

1 Notice of Complaint for Forfeiture, and Lis Pendens, as evidenced by the USM-  
2 285 filed herein on November 29, 2006. CR 7.

3 On November 27, 2006, the U.S. Marshals Service personally served Rick  
4 Mendoza with copies of the Verified Complaint for Forfeiture In Rem, Notice of  
5 Complaint for Forfeiture, and Lis Pendens, as evidenced by the USM-285 filed  
6 herein on November 29, 2006. CR 7.

7 On November 29, and December 6 and 13, 2006, the Notice of Complaint  
8 for Forfeiture was published in the Leavenworth Echo/Cashmere Valley Record, a  
9 newspaper of general circulation in Chelan County, Washington, as evidenced by  
10 the United States Marshals Service Form USM-285 filed herein on December 27,  
11 2006. CR 21. At the latest, the time for filing a claim expired on January 12,  
12 2007. Supplemental Rules for Certain Admiralty and Maritime Claims C(6)(a).

13 On December 15, 2006, Al Mendoza filed a claim to the Defendant real  
14 property. CR 11. On January 9, 2007, Al Mendoza filed a response to the  
15 Complaint. CR 29. To date, no other claims have been filed.

16 On January 31, 2007, a Clerk's Orders of Default was entered against  
17 Patricia Mendoza, forfeiting her interest in the Defendant real property to the  
18 United States. CR 31.

19 On January 31, 2007, a Clerk's Orders of Default was entered against Rick  
20 Mendoza, forfeiting his interest in the Defendant real property to the United States.  
21 CR 32.

22 On March 28, 2008, the Court granted partial summary judgment in favor of  
23 the United States, holding that the Plaintiff met its initial burden proving that the  
24 Defendant real property is subject to forfeiture to the United States.

25 The issue reserved for trial was whether or not the Claimant met his burden  
26 to prove he is an "innocent owner" in accordance with 18 U.S.C. § 983.

27 This Court has jurisdiction over this matter by virtue of 28 U.S.C. §1345 and  
28 §1355.

1 II. Findings of Fact

2 On June 16, 2008, a bench trial was held in this matter to resolve whether  
3 the Claimant had an ownership interest in the Defendant real property. The  
4 Claimant Al Mendoza, Rick Jaydin Mendoza, Elodio Mendoza Mendoza, Juan  
5 Bravo-Guzman, Rovvie Ramirez, Joanna “Jode” Holman Allison,<sup>1</sup> and Patricia  
6 Mendoza testified. Upon review of the testimony, exhibits, and the entire record,  
7 the Court hereby finds the following:

8 Rick and Patricia Mendoza purchased the property in December 1995 for  
9 \$73,600. Exh. 22 (Deed of Trust).

10 Sometime early in 2002, a manufactured home (also referred to as trailer) on  
11 the subject property, which was the residence of Rick and Patricia Mendoza was  
12 completely destroyed by a fire. Rick Mendoza testified that he received  
13 approximately \$80,000 (\$50,000 for the trailer and \$30,000-\$40,000 for personal  
14 property contents) in insurance proceeds. Rick Mendoza’s used the insurance  
15 proceeds to pay off the underlying purchase price of the subject property as well as  
16 for other purposes and did not transfer funds to Al Mendoza therefrom.

17 On November 12, 2002, Rick and Patricia Mendoza transferred the subject  
18 property to Al Mendoza by Quitclaim Deed for “\$1.00 and good consideration.”  
19 Exh. 23 (Quitclaim Deed); SMF 47. Rick Mendoza testified that he transferred  
20 the property to Al Mendoza because he couldn’t afford to have the property  
21 “cleaned-up” after the 2002 fire.

22 In 2002, Al Mendoza testified he took out a loan and wrote a check for  
23 \$7,500, leaving the payee line blank, for clean-up of the subject property. Rick  
24 Mendoza testified that he used most of the \$7,500 to clean-up the property, which  
25 took a couple of weeks and used the remainder for other expenses.

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27 <sup>1</sup>This government witness was taken out of sequence based on her limited  
28 availability and for the purpose of possible rebuttal testimony. Because the  
claimant’s claim was dismissed at the close of his case, the testimony was not  
considered by the Court.

1 In or about 2004, after the property was quit-claimed to Al Mendoza, Rick  
2 Mendoza began building a rock wall around the entire subject property. Rick  
3 Mendoza also installed two security gates, paved a driveway and built a 30' x 40'  
4 residence (garage/residence) on the subject property. In 2005, Rick Mendoza was  
5 billed and paid for well drilling and pump-related items. Rick Mendoza's friend  
6 Robbie Ramirez testified that in 2006 he (Robbie Ramirez), was involved in  
7 surveying the subject property to determine where Rick Mendoza could construct a  
8 new home. None of the improvements made to the property following transfer by  
9 quit claim deed were discussed with Al Mendoza prior to their initiation nor did  
10 Rick Mendoza obtain Al Mendoza's consent thereto before proceeding.  
11 Additionally, Al Mendoza did not learn of the improvements until well after they  
12 were made (as is discussed further in these findings).

13 Al Mendoza has never lived at or on the Defendant real property. According  
14 to Al Mendoza, he did not spend any time there in 2003, 2004, or 2005, because he  
15 was stationed abroad. SMF 62. According to Al Mendoza, he visited the real  
16 property for approximately 1 month in July/August 2006 and for a few days in July  
17 2007. SMF 63 and 64.

18 In or about September 2006, Al Mendoza gave a \$13,500 check to Rick  
19 Mendoza. The check, however, was never cashed by Rick Mendoza and was later  
20 seized by the Drug Enforcement Agency at the time the search warrant was  
21 executed at the subject property when Rick Mendoza was arrested on November  
22 23, 2006.

23 Al Mendoza has never paid for the utilities, phone, maintenance, garbage  
24 collection, or other typical ownership expenses for the real property. SMF 71. Al  
25 Mendoza stated that he paid the property taxes on the premises in 2006 and 2007 in  
26 cash when he was in Chelan, Washington. SMF 69. However, there is no  
27 evidence offered in the form of receipts to prove that Al Mendoza actually  
28 provided the funds for the taxes nor deducted them on any personal IRS tax return

1 as he would ordinarily be entitled to do. Elodio Mendoza, the father of Rick  
2 Mendoz and Al Mendoza, testified that he (Elodio) paid property taxes on the  
3 premises from time to time and was occasionally reimbursed for monies expended  
4 for this purpose. Al Mendoza testified that the taxes were paid in cash and he had  
5 no receipts. SMF 70.

6 Al Mendoza also stated that he paid for home insurance on the property  
7 beginning in 2006. Al further stated that the property was uninsured from 2003  
8 until 2006, during which time Rick Mendoza was living on the property . SMF 67  
9 and 72.

10 Al Mendoza stated that he and Rick Mendoza did not talk about Rick  
11 Mendoza moving back onto the Defendant real property located at 4570 Navarre-  
12 Coulee Road prior to his move. SMF 30. Al Mendoza also stated that he was  
13 unaware of the residence and other improvements to the Defendant real property  
14 until he visited there in July 2006. SMF 34. Al Mendoza further stated that he did  
15 not give permission for Rick Mendoza to build the two story house or make other  
16 improvements to the Defendant property. SMF 33.

17 In addition, except as otherwise noted herein, Al Mendoza did not and has  
18 not paid Rick Mendoza for acquisition of the real property. Al Mendoza stated that  
19 Rick Mendoza transferred the Defendant real property to him in 2002 because Rick  
20 Mendoza had, in approximately 1992, destroyed a 1988 truck valued at  
21 \$15,000.00<sup>2</sup> of Al Mendoza's when Al Mendoza was serving in the military and  
22 was stationed in Korea. Al Mendoza stated that Rick Mendoza told Al Mendoza  
23 that he would pay Al Mendoza back for the destroyed vehicle. SMF 28 and 47.  
24 No documentation concerning ownership and value of the truck has been submitted  
25 incident to these proceedings.

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28 <sup>2</sup>Al Mendoza testified that he received approximately \$11,000-\$12,000 as  
insurance proceeds from his insurance company USAA for the destroyed truck  
which he had acquired for \$18,000 approximately 3 years earlier.

1 The uniform innocent owner provision of the Civil Asset Forfeiture Reform  
2 Act (CAFRA), 18 U.S.C. § 983(d), distinguishes between owners whose property  
3 interest was in existence at the time the illegal conduct giving rise to the forfeiture  
4 occurred, and owners who show interest was acquired after the conduct giving rise  
5 to the forfeiture occurred.

6 In this case, Claimant Al Mendoza's interest in the Defendant real property  
7 arose on November 12, 2002, when the quit claim deed was recorded. SMF 21.  
8 The Second Superseding Indictment alleges that Rick Mendoza engaged in a  
9 conspiracy to distribute controlled substances that began on a date unknown, but  
10 by on or about December 1, 2005. Therefore, Claimant Al Mendoza's interest  
11 arose prior to the alleged criminal conduct giving rise to the forfeiture. SMF 1.

12 18 U.S.C. § 983(d)(2)(A), states the following:

13 (2)(A) With respect to a property interest in existence at the time the illegal  
14 conduct giving rise to the forfeiture took place, the term "innocent owner" means  
15 an owner who-

16 (i) did not know of the conduct giving rise to the forfeiture; or

17 (ii) upon learning of the conduct giving rise to the forfeiture, did all that  
18 reasonably could be expected under the circumstances to terminate such use of the  
19 property.

20 It is also clear on this record that Al Mendoza wondered how his brother  
21 Rick Mendoza was financing the construction and improvements made to the  
22 Defendant real property. SMF 79 and 80. The Court, however, as discussed and  
23 noted below, finds that Al Mendoza is a "nominee" who did not exercise dominion  
24 and control over the property and had no knowledge of the drug-related activity  
25 occurring thereon.

### 26 III. Conclusions of Law

27 Under CAFRA, a claimant may defeat a forfeiture by showing that he is an  
28 "innocent owner." Section 983(d) sets forth the requirements of the innocent

owner defense, which must be proven by a preponderance of the evidence. 18 U.S.C. § 983(d)(1). A threshold question is whether the claimant qualifies as an owner. Subsection 983(d)(6)(A) defines "owner" as "a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest." Subsection 983(d)(6)(B) identifies three specific categories which are not owners:

- (i) a person with only a general unsecured interest in, or claim against, the property or estate of another;
- (ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized;
- (iii) a nominee who exercises no dominion or control over the property.

Id. See, United States v. One Lincoln Navigator 1998, 328 F.3d 1011, 1014 (8<sup>th</sup> Cir., 2003).

The Court finds Claimant cannot prove by a preponderance of the evidence that he is an innocent owner as defined in 18 U.S.C. § 983(d)(1) and that he is a "nominee" under the statute cited above.

#### IV. Conclusion

At the conclusion of the bench trial, the Court found that the sole Claimant Al Mendoza had standing to claim the subject property and had demonstrated he possessed mere legal title acquired through a quit claim deed. The Court, however, found that Al Mendoza did not meet his burden of proof demonstrating that his interest was more than nominal. Additionally, the value of the real property received in the form of a quit claim deed by Al Mendoza at all times material far exceeded the amount of any debt which Rick Mendoza would have owed to Al Mendoza and such debt, if it existed, would have been barred by the Statute of Limitations due to the passage of time from the destruction of the vehicle (approximately 1992) and the date of the quit claim deed. The evidence revealed that Rick Mendoza exercised full dominion and control over the subject property



1 consistent with being a true owner of an interest in the property. The Court further  
2 determined that possession of mere legal title by Al Mendoza, who did not exercise  
3 ongoing dominion and control over the property, was insufficient to meet the  
4 requirements to make him an “innocent owner.” In short, the quit claim deed to Al  
5 Mendoza did not transfer dominion and control and was intended by Rick  
6 Mendoza to insulate the property from his creditors as well as others. By his  
7 words and actions, Rick Mendoza maintained dominion and control over the  
8 property at all times material to this proceeding.

9 Consequently, the United States is directed to present a Final Order of  
10 Forfeiture for review by the Court in order for the Defendant real property located  
11 at 4570 Navarre-Coulee Road, in Chelan, Washington, to be condemned and  
12 forfeited to the United States of America. Entry of final judgment shall, however,  
13 abide a further ruling on the government’s motion to compel (Ct. Rec. 110) taken  
14 under advisement incident to the Court’s request for additional written responses  
15 from the parties concerning the same.

16 IT IS SO ORDERED. The District Court Executive is directed to enter this  
17 Order and provide a copy of this Order to counsel. The Clerk’s Office is directed  
18 to maintain the file in open status pending entry of a Final Order of Forfeiture.

19 DATED this 27<sup>th</sup> day of June, 2008.

20  
21 *S/ Lonny R. Suko*

22 Lonny R. Suko  
23 United States District Judge  
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